

May 24, 2005

Thomas A. Willis  
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201 Dolores Avenue  
San Leandro, CA 94577

**Re: Your Request for Advice  
Our File No. A-05-098**

Dear Mr. Willis:

This letter is in response to your request on behalf of General Bill Lockyer and the Lockyer 2006 Committee for advice regarding the Proposition 34 provisions of the Political Reform Act (the "Act").<sup>1</sup>

### **QUESTION**

When Attorney General Bill Lockyer and his Lockyer 2006 Committee (for Governor) transfers pre-Proposition 34 funds to Mr. Lockyer's new 2006 committee for State Treasurer, may the interest that was earned on those funds while in the Lockyer 2006 Committee also be transferred without attribution?

### **CONCLUSION**

Yes.

### **FACTS**

You are seeking advice concerning the transfer of pre-Proposition 34 funds from the 2006 Committee to a new committee to support Mr. Lockyer's 2006 campaign for State Treasure.

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

In November 2002, Mr. Lockyer successfully ran for a second term as Attorney General. As of November 6, 2002, Mr. Lockyer's Attorney General Committee (the "2002 Committee") had excess funds, also known as pre-Proposition 34 funds (contributions received prior to November 6, 2002, the effective date of Proposition 34 for statewide candidates).

At the end of 2002 and beginning of 2003, Mr. Lockyer opened the 2006 Committee and transferred Pre-Proposition 34 funds from the 2002 Committee to the 2006 Committee. Those funds were then deposited in money market accounts and accrued interest.

Mr. Lockyer now has decided to seek the office of Treasurer in 2006, rather than the office of Governor. He intends to transfer all or a portion of the pre-Proposition 34 funds from the 2006 Committee to the Treasurer Committee.

For the purposes of this request, you ask us to assume that (1) none of the pre-Proposition 34 funds, including the interest accrued on those funds, have been spent by the 2006 Committee, and (2) the lowest balance of the 2006 Committee has never dropped below the amount of the pre-Proposition 34 funds.

### ANALYSIS

Government Code section 85306, subdivision (c),<sup>2</sup> allows candidates for statewide elective office who possess funds on the effective date of Proposition 34 (November 6, 2002) transfer those funds without attribution to the candidate's subsequent campaign committees. (Also see regulation 18530.2.)

In the *Fishburn* Advice Letter, No. A-04-110, an incumbent statewide officeholder asked whether the interest that had accrued on his pre-34 funds in his pre-34 statewide office committee could be transferred to his reelection committee (post-34) also without attribution, even where the interest had accrued after the effective date of Proposition 34. We advised that he could do so without attribution.

While the circumstance of your request is different from that of the *Fishburn* scenario insofar as in the present matter the interest on the pre-34 funds accrued in a post-34 account, the rationale articulated in that letter applies. In *Fishburn*, we stated:

"The Commission has advised that committees report interest on disclosure forms as a miscellaneous increase to cash. (*Trask-Lee* Advice Letter, No. I-04-047; *Odom* Advice Letter, No. I-91-172.) This system regards the committee's contributions on hand and the interest earned by those contributions as an undifferentiated pot of money. As a result, interest earned by O'Connell 2002 may be

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<sup>2</sup> All statutory references are to the Government Code unless indicated otherwise.

transferred as part of the pre-34 funds pursuant to section 85306, subdivision (c).” (Footnote omitted.)

Based on the principles discussed in the *Fishburn* Advice Letter, we see no reason to distinguish between that case and the case you present here. As a result, Mr. Lockyer may transfer the interest accrued on his pre-34 funds from his 2006 gubernatorial committee to his 2006 State Treasurer committee without attribution.<sup>3</sup>

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By: C. Scott Tocher  
Senior Commission Counsel,  
Legal Division

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<sup>3</sup> This conclusion applies, of course, only to the pre-34 funds and the interest accrued thereon. You did not ask, and do not render an opinion on, how interest on post-34 funds would be accounted for in a transfer.